

Message Text

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ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 /026 W
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O 291350Z JAN 75

FM AMEMBASSY NASSAU

TO SECSTATE WASHDC IMMEDIATE 6383

INFO USMISSION USUN NEW YORK IMMEDIATE

AMEMBASSY JAKARTA IMMEDIATE

AMEMBASSY MANILA IMMEDIATE

AMEMBASSY SUVA BY POUCH

S E C R E T SECTION 1 OF 2 NASSAU 161

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EXDIS

E. O. 11652: GDS

TAGS: PLOS BF

SUBJ: ARCHIPELAGO AND STRAITS NEGOTIATIONS WITH THE BAHAMAS

FOR DEPUTY SECRETARY INGERSOLL AND UNDER SECRETARY MAW FROM
JOHN NORTON MOORE

USUN PLEASE PASS AMBASSADOR STEVENSON, DEPT PLEASE PASS
ESKIN D/LOS AND ROGERS ARA

1. SUMMARY: US TEAM, LED BY JOHN NORTON MOORE, MET WITH BAHAMIAN LOS TEAM TO DISCUSS ARCHIPELAGO AND STRAITS UNDERSTANDING. EXTERNAL AFFAIRS MINISTER ADDERLEY AND AMBASSADOR WEISS ALSO PARTICIPATED IN OPENING DISCUSSIONS. TALKS WENT WELL AND RESULTED IN AN AGREED RECORD OF DISCUSSIONS BETWEEN THE BAHAMIAN AND US REPRESENTATIVES WHICH CALLED FOR SUBMISSION OF A DETAILED ARCHIPELAGO-STRATIS UNDERSTANDING TO THEIR RESPECTIVE GOVERNMENTS WITH UNDERTAKING THAT THE TWO GOVERNMENTS WILL INFORM EACH OTHER AT EARLIEST POSSIBLE TIME CONCERNING ACCEPTANCE OF RECOMMENDATIONS CONTAINED THEREIN. PRIVATE INDICATIONS WERE THAT BAHAMIAN LOS EXPERTS HAD NO SUBSTANTIVE PROBLEMS WITH US PROPOSAL BUT FELT THAT THEY COULD NOT COMMIT

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BAHAMIAN GOVERNMENT WITHOUT SUBMISSION TO MINISTERS.

2. TEXT OF "AGREED RECORD OF DISCUSSIONS BETWEEN THE BAHAMIAN AND UNITED STATES REPRESENTATIVES" IS AS FOLLOWS:

QUOTE THE TWO LAW OF THE SEA TEAM AT DISCUSSIONS DESIGNED TO PROMOTE A SUCCESSFUL RESOLUTION OF ISSUES REGARDING ARCHIPELAGOS AND STRAITS USED FOR INTERNATIONAL NAVIGATIONS AT THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA IN THEIR MUTUAL INTERESTS AND IN THE INTERESTS OF THE INTERNATIONAL COMMUNITY AS A WHOLE, WILL SUBMIT TO THEIR RESPECTIVE GOVERNMENTS FOR CONSIDERATION THE FOLLOWING POINTS REGARDING THEIR RESPECTIVE POSITIONS AT THE CONFERENCE:

1) BOTH GOVERNMENTS WILL SUPPORT AND SEEK TO ENSURE THE INCLUSION IN THE LAW OF THE SEA TREATY OF THE ARCHIPELAGO PRINCIPLE AS FOLLOWS:

A. THE PRINCIPLE, AS SET FORTH BELOW, MAY BE APPLIED ONLY BY AN ARCHIPELAGIC STATE THAT IS AN INDEPENDENT ISLAND NATION WHOSE COMPONENT ISLANDS AND OTHER NATURAL FEATURES FORM A SINGLE INTRINSIC GEOGRAPHICAL, ECONOMIC AND POLITICAL ENTITY. AN ARCHIPELAGIC STATE MAY DRAW ARCHIPELAGIC LINES ENCLOSING THE ARCHIPELAGO CONNECTING THE OUTERMOST POINTS OF THE OUTERMOST ISLANDS OF THE ARCHIPELAGO PROVIDED SUCH LINES ENCLOSE THE MAIN ISLANDS AND AN AREA IN WHICH THE LAND-TO-WATER RATIO IS GREATER THAN 1:1 AND LESS THAN 1:9 (COMPUTING WATERS WITHIN ATOLLS AS LAND), AND PROVIDED ANY SUCH LINES DO NOT EXCEED 80 NAUTICAL MILES IN LENGTH, EXCEPT THAT ONE PERCENT OF SUCH LINES MAY BE UP TO 125 NAUTICAL MILES IN LENGTH. FOR PURPOSES OF COMPUTING THE LAND-TO-WATER RATIO, AN ATOLL IS A CHAIN OF LIMESTONE ISLANDS PARTLY CROWNING A RING OF REEF: (1) WHICH IS SUBMERGED OR NEARLY SUBMERGED AT HIGH TIDE; (2) WHICH RISES SHARPLY FROM THE OCEAN FLOOR AND (3) WHICH ENCLOSES OR NEARLY ENCLOSES A LAGOON OF SHALLOW WATER. THE TWO GOVERNMENTS MAY IF NECESSARY AGREE ON TECHNICAL CHANGES IN THE PRECISE FIGURES MENTIONED THAT DO NOT ALTER THE SUBSTANCE OF THE AREAS INTENDED TO BE INCLUDED. THE FACT THAT A STATE HAS ISLANDS FALLING OUTSIDE THE ARCHIPELAGO UNDER THIS FORMULA SHALL NOT PRECLUDE IT FROM APPLYING THE PRINCIPLE TO THE ARCHIPELAGO.

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B. THE TERRITORIAL SEA, ECONOMIC ZONE, AND CONTINENTAL SHELF JURISDICTION OF AN ARCHIPELAGIC STATE SHALL BE MEASURED FROM THE OUTSIDE PERIMETER OF ARCHIPELAGIC LINES (AS IF SUCH LINES WERE BASELINES FOR MEASURING THE BREADTH OF THE TERRITORIAL SEA).

C. 1. WATERS WITHIN ARCHIPELAGIC LINES SHALL BE DESIGNATED

ARCHIPELAGIC WATERS.

2. SUBJECT TO THE PROVISIONS CONCERNING ARCHIPELAGIC PASSAGE OF SHIPS AND AIRCRAFT THE ARCHIPELAGO STATE WOULD EXERCISE SOVEREIGNTY OVER THE RESOURCES, WATERS, SEABED, SUBSOIL, AND AIRSPACE ENCLOSED WITHIN THE ARCHIPELAGIC LINES.

D. ALL SHIPS AND AIRCRAFT OF ALL STATES, WITHOUT DISTINCTION, WILL HAVE A RIGHT OF ARCHIPELAGIC PASSAGE THROUGH THE ARCHIPELAGO FROM HIGH SEAS TO HIGH SEAS IN THE NORMAL MODE FOR SUCH VESSELS AND AIRCRAFT (INCLUDING THEREBY SUBMERGED TRANSIT, OVERFLIGHT, AND NORMAL MEASURES ASSOCIATED WITH TRANSIT). ARCHIPELAGIC PASSAGE IS THE EXERCISE OF FREEDOM OF NAVIGATION AND OVERFLIGHT SOLELY FOR THE PURPOSE OF TRANSIT THROUGH THE ARCHIPELAGO, AND MAY NOT BE IMPEDED OR SUBJECT TO NOTIFICATION.

E. ARCHIPELAGIC PASSAGE COULD BE LIMITED TO SEALANES RUNNING FROM HIGH SEAS TO HIGH SEAS THAT:

1. INCLUDE ALL NORMAL PASSAGE ROUTES THROUGH ARCHIPELAGIC WATERS, AND WITHIN SUCH ROUTES ALL NORMAL NAVIGATIONAL CHANNELS, PROVIDED THAT DUPLICATION OF EQUALLY SUITABLE ROUTES BETWEEN THE SAME ENTRY AND EXIT POINTS SHALL NOT BE NECESSARY, AND

2. INCLUDE AN AREA WHICH AT ALL POINTS IS NOT LESS THAN THE NARROWER OF:

(I) 80 PERCENT OF THE DISTANCE BETWEEN THE NEAREST POINTS OF LAND ON THE MAIN ISLANDS, (I.E., NOT DRYING ROCKS OR SHOALS), OR

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(II) 80 NAUTICAL MILES.

3. THE TREATY WOULD PROVIDE THAT THE AUTHORITY TO DESIGNATE ARCHIPELAGIC SEALANES PURSUANT TO THESE CRITERIA RESTS WITH THE ARCHIPELAGO STATE SUBJECT TO COMPULSORY DISPUTE SETTLEMENT PROCEDURES GENERALLY APPLICABLE TO DISPUTES ARISING UNDER THE LAW OF THE SEA TREATY.
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ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 /026 W
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FM AMEMBASSY NASSAU

TO SECSTATE WASHDC IMMEDIATE 6384

INFO USMISSION USUN NEW YORK IMMEDIATE

AMEMBASSY JAKARTA IMMEDIATE

AMEMBASSY MANILA IMMEDIATE

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S E C R E T SECTION 2 OF 2 NASSAU 161

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FOR DEPUTY SECRETARY INGERSOLL AND UNDER SECRETARY MAW FROM
JOHN NORTON MOORE

USUN PLEASE PASS AMBASSADOR STEVENSON, DEPT PLEASE PASS
ESKIN D/LOS AND ROGERS ARA

F. AIRCRAFT ENGAGED IN ARCHIPELAGIC TRANSIT OVER SUCH LANES
COULD FURTHER BE LIMITED TO AGREED ALTITUDE BLOCKS OR TO AN
ALTITUDE ABOVE AN AGREED LEVEL WHICH FOSTER SAFETY OF AIR
NAVIGATION AND PROTECT THE RIGHT OF OVERFLIGHT FOR ALL TYPES
OF AIRCRAFT.

G. SHIPS AND AIRCRAFT IN TRANSIT WOULD BE SUBJECT TO THE
FOLLOWING:

1. THAT THEY PROCEED WITHOUT UNREASONABLE DELAY AND NOT
ENGAGE IN ACTIVITIES OTHER THAN THOSE NORMALLY INCIDENT TO
TRANSIT.

2. THAT THEY REFRAIN FROM ANY THREAT OR USE OF FORCE IN
VIOLATION OF THE UN CHARTER AGAINST THE TERRITORIAL INTEGRITY
OR POLITICAL INDEPENDENCE OF THE ARCHIPELAGIC STATE

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3. THAT THEY OBSERVE REASONABLE REGARD FOR OTHER USES OF

ARCHIPELAGIC WATERS, INCLUDING RESOURCE USES

4. THAT SHIPS COMPLY WITH INTERNATIONALLY APPROVED TRAFFIC SEPARATION SCHEMES, AND GENERALLY ACCEPTED INTERNATIONAL REGULATIONS, PROCEDURES AND PRACTICES FOR THE SAFETY OF NAVIGATION AT SEA AND FOR THE PREVENTION AND CONTROL OF POLLUTION FROM SHIPS

5. THAT CIVIL AIRCRAFT OBSERVE THE RULES OF THE AIR ESTABLISHED BY ICAO (AS APPLICABLE TO HIGH SEAS AREAS), AND THAT STATE AIRCRAFT NORMALLY COMPLY WITH SUCH SAFETY MEASURES AND AT ALL TIMES OPERATE WITH DUE REGARD FOR THE SAFETY OF NAVIGATION.

H. VESSELS WOULD ENJOY THE RIGHT OF INNOCENT PASSAGE OUTSIDE ARCHIPELAGIC LANES, PROVIDED THAT THE ARCHIPELAGIC STATE MAY IN SPECIFIED AREAS OF ARCHIPELAGIC WATERS OUTSIDE SUCH LANES, WITHOUT DISCRIMINATION IN FORM OR IN FACT AMONG FOREIGN SHIPS, EITHER REQUIRE ADVANCE NOTIFICATION FOR, OR SUSPEND TEMPORARILY, THE INNOCENT PASSAGE OF FOREIGN SHIPS IF SUCH ACTION IS NECESSARY FOR THE PROTECTION OF ITS SECURITY.

2) BOTH GOVERNMENTS WILL SUPPORT AND SEEK TO ENSURE THE INCLUSION IN THE LAW OF THE SEA TREATY OF THE PRINCIPLE OF UNIMPEDED PASSAGE OF STRAITS USED FOR INTERNATIONAL NAVIGATION FOR ALL SHIPS AND AIRCRAFT OF ALL STATES, WITHOUT DISTINCTION. UNIMPEDED PASSAGE IS THE EXERCISE OF FREEDOM OF NAVIGATION (INCLUDING SUBMERGED TRANSIT, OVERFLIGHT, AND NORMAL MEASURES ASSOCIATED WITH TRANSIT) SOLELY FOR THE PURPOSE OF TRANSIT AND MAY NOT BE IMPEDED OR SUBJECT TO NOTIFICATION. THE TREATY WOULD REQUIRE VESSELS IN TRANSIT TO COMPLY WITH APPLICABLE GENERALLY ACCEPTED INTERNATIONAL TRADITIONAL SEPARATION AND OTHER SAFETY AND POLLUTION STANDARDS, AND COULD ENVISAGE SPECIAL INTERNATIONALLY APPROVED STANDARDS OF THIS NATURE FOR STRAITS WHERE THERE ARE SPECIAL PROBLEMS. OUTSIDE STRAITS USED FOR INTERNATIONAL NAVIGATION, THE REGIME OF INNOCENT PASSAGE WOULD APPLY IN THE MAXIMUM 12-MILE TERRITORIAL SEA.

3) MODALITIES FOR INITIAL EXPRESSION OF SUCH SUPPORT AT AN
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EARLY STAGE OF THE GENEVA SESSION OF THE LAW OF THE SEA CONFERENCE WILL BE AGREED BY THE DELEGATIONS, AND THEY WILL CONSULT UPON ARRIVAL AT GENEVA ON PRECISE TREATY TEXTS GIVING EXPRESSION TO THEIR AGREEMENT. ONE APPROPRIATE POSSIBILITY WOULD BE FOR THE UNITED STATES TO EXPRESS SUPPORT FOR A NEW MUTUALLY AGREED ARCHIPELAGO TEXT INTRODUCED BY ARCHIPELAGIC STATES (INCLUDING THE BAHAMAS AND INDONESIA) AS THE APPROPRIATE ACCOMMODATION OF RELEVANT INTERESTS, AND FOR THE BAHAMAS

TO EXPRESS SUPPORT FOR AN APPROACH SUCH AS THAT CONTAINED IN THE STRAITS ARTICLES INTRODUCED IN CARACAS BY THE UNITED KINGDOM AS THE APPROPRIATE ACCOMMODATION OF RELEVANT INTEREST. PRIVATE EFFORTS AMONG OTHER COUNTRIES WOULD ALSO BE DISCUSSED.

4) IT IS UNDERSTOOD THAT MUTUAL SUPPORT FOR THE ARCHIPELAGIC PRINCIPLE AND UNIMPEDED TRANSIT OF STRAITS AS CONTAINED HEREIN IS SUBJECT TO AN EARLY SATISFACTORY UNDERSTANDING BETWEEN THE PRINCIPAL MARITIME STATES AND THE PRINCIPAL ARCHIPELAGIC STATES (INCLUDING AT LEAST THE BAHAMAS AND INDONESIA).

5) IT IS UNDERSTOOD THAT THE POINTS COVERED HEREIN WOULD RELATE ONLY TO THE CONTENTS, ON THE SUBJECTS INVOLVED, OF A NEW GENERALLY ACCEPTABLE INTERNATIONAL CONVENTION ON THE LAW OF THE SEA, AND DO NOT CONSTITUTE A SEPARATE AGREEMENT AND ARE WITHOUT PREJUDICE TO THE POSITIONS OF THE RESPECTIVE GOVERNMENTS IN THE ABSENCE OF SUCH A CONVENTION.

6) THIS DOCUMENT WILL NOT BE DISTRIBUTED OUTSIDE THE RELEVANT AUTHORITIES OF THE TWO GOVERNMENTS EXCEPT AS AGREED. OUTSIDE DISCUSSION OF THE NATURE OF THE CONVERSATIONS WILL BE AS AGREED.

7) THE TWO GOVERNMENTS WILL INFORM EACH OTHER THROUGH DIPLOMATIC CHANNELS AT THE EARLIEST POSSIBLE TIME WHETHER THEY CAN ACCEPT THE RECOMMENDATIONS CONTAINED HEREIN.

8) IT IS UNDERSTOOD THAT THERE ARE A LIMITED NUMBER OF TECHNICAL QUESTIONS TO BE RESOLVED WHICH DO NOT REFLECT DIFFERENCES OF POLICY RESPECTING THE DEFINITION AND STATUS OF THE ARCHIPELAGIC REGIME. THESE TECHNICAL QUESTIONS CONCERN THE EXISTING REGIME OF INTERNAL WATERS, TREATY COMPATABILITY UNDER PARAGRAPH 1(H), AND PROTECTION OF COMMERCIAL TELE-
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COMMUNICATIONS CABLE. UNQUOTE

3. BECAUSE OF SENSITIVITY OF ARCHIPELAGO-STRAITS DISCUSSIONS, BAHAMAS LOS TEAM HAS ASKED THAT WE KEEP AGREED RECORD OF DISCUSSIONS CONFIDENTIAL EXCEPT AS OTHERWISE EXPRESSLY AGREED.

4. MOORE AND LOS TEAM WOULD PARTICULARLY LIKE TO THANK AMBASSADOR WEISS AND DCM RIDGWAY FOR THEIR GREAT ASSISTANCE IN ENABLING PRODUCTIVE MEETING.
WEISS

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Message Attributes

Automatic Decaptioning: Z
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAW OF THE SEA, TEXT, ARCHIPELAGOS, STRAITS, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 29 JAN 1975
Decaption Date: 28 MAY 2004
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: SmithRJ
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975NASSAU00161
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D750032-1050
From: NASSAU
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750110/aaaaaixn.tel
Line Count: 326
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION SS
Original Classification: SECRET
Original Handling Restrictions: STADIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 6
Previous Channel Indicators: n/a
Previous Classification: SECRET
Previous Handling Restrictions: STADIS
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: SmithRJ
Review Comment: n/a
Review Content Flags:
Review Date: 18 JUN 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <18 JUN 2003 by KelleyW0>; APPROVED <31 OCT 2003 by SmithRJ>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: ARCHIPELAGO AND STRAITS NEGOTIATIONS WITH THE BAHAMAS FOR DEPUTY SECRETARY INGERSOLL AND UNDER SECRETARY MAW FROM
TAGS: PLOS, BF, (MOORE, JOHN NORTON)
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006